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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-20

MARK B. ARONSON and KENNETH W. BEHREND on behalf of themselves and all others similarly situated, *Petitioners*

v.

DANIEL W. AMBROSE, Chairman of the District Court of the Virgin Islands Committee of Bar Examiners and RICHARD E. GRUNERT, VINCENT A. GAMAL, WINSTON A. HODGE, and ROGER L. CAMPBELL, members of the Committee of Bar Examiners of the District Court of the Virgin Islands, *Respondents*

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

The District Court of the Virgin Islands Committee of Bar Examiners, DANIEL W. AMBROSE, Chairman, RICHARD E. GRUNERT, VINCENT A. GAMAL, WINSTON A. HODGE and ROGER L. CAMPBELL, members, the Respondents herein pray that the Petition for Writ of Certiorari be denied.

JURISDICTION

Petitioners have attempted to create the impression that their matter is one of first impression, by alleging that this is the first time that a Court of Appeals has been asked to consider the constitutionality of residency requirements based upon the rules of a federal court. Such allegation is misleading. The District Court of the Virgin Islands is not a United States District Court. It is the highest court of the Territory of the United States Virgin Islands. Petitioners correctly state at page 6 of their Brief, "the District Court of the Virgin Islands is a territorial court and not a United States District Court as defined in 28 USC 451, *Stainback* v. *Mo Hock Ke Lok Po,* 1949, 336 U.S. 368." See footnote 2 of the Opinion of the Court of Appeals (Appendix A-3). Petitioners' claim of uniqueness is without foundation.

QUESTION PRESENTED

WHETHER A RULE IS UNCONSTITUTIONAL WHICH REQUIRES AN APPLICANT FOR ADMISSION TO PRACTICE BEFORE THE COURTS OF THE VIRGIN ISLANDS TO ALLEGE THAT, IF ADMITTED, HE INTENDS TO PERMANENTLY RESIDE AND PRACTICE LAW IN THE VIRGIN ISLANDS.

STATEMENT

Petitioners filed their applications to be admitted to the practice of law before the District Court of the Territory of the United States Virgin Islands. The rules of that Court require:

1. That applicant be a resident of the Virgin Islands at least one year prior to admission to practice;
2. That applicant take and pass a bar examination given by the Committee of Bar Examiners;

3. That applicant allege and prove to the satisfaction of the Committee that, if admitted, he would continue to reside in and practice law permanently in the Virgin Islands;

The applications of Petitioners alleged that they would not be residents of the Virgin Islands for the one year but would continue their residency in Pittsburgh, Pennsylvania; that they should not be required to take or pass the written bar examination; and that they did not, if admitted, intend to reside and practice law permanently in the Virgin Islands, but intended to commute back and forth between Pittsburgh, Pennsylvania and the Virgin Islands.

The applications were denied by the Committee of Bar Examiners.

After a hearing the District Court of the Virgin Islands refused to admit the Petitioners to practice there.

The United States Court of Appeals for the Third Circuit affirmed the District Court decision.

The matter is now before this Court on a Writ of Certiorari by Petitioners.

By this Brief in Opposition Respondents contend that Rule 56(b)(5) of the District Court of the Virgin Islands deals with an area of compelling interest reserved to the States and therefore Petitioners have not presented a substantial Federal question for the attention of this Court.

ARGUMENT

Respondents respectfully suggest that the Petitioners have not presented a substantial Federal question.

The decision of the District Court, as affirmed by the Court of Appeals, does not present a matter about which there is conflict among the Federal District Courts, or among the Circuits. Both courts below found but one issue for determination: that a rule is not unconstitutional which requires an attorney who applies to practice law in the United States Virgin Islands to allege that, if admitted, he would permanently reside and practice law there.

The issue reached by both courts obviates the need for consideration of any of the other questions raised by Petitioners. Simply stated, if Petitioners do not wish or intend to permanently reside and practice law in the Virgin Islands, if admitted, then there is no need to discuss the propriety of residency requirements prior to admission or whether Petitioners should be required to take and pass the required written bar examination.

The sole question before this court is one which turns upon its own facts and will probably affect few others, if any, than these litigants and is not one of far reaching consequences.

The Opinion of the District Court of the Virgin Islands, affirmed by the Court of Appeals, is correct and should not be overturned. Chief Judge Christian, in considering the relationship of *Shapiro* v. *Thompson*, 394 U.S. 618, 1969, to the facts of the case at bar remarked that this Court emphasized repeatedly that the right to travel (with which Shapiro was concerned)

was one of "migration"; involving "resettling", "finding a new job", "starting a new life". Judge Christian said:

> "An attempt to interfere with the right merely to enter a state or territory would be objectionable on other grounds. It is clear however, that the provision in question [Rule 56(b)(5)] does none of these things—it leaves citizens free to travel here at their leisure, and to migrate here if they so desire. Only the somewhat irresponsible combination the plaintiffs happen to desire is made difficult.
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> * * * *
>
> . . . plaintiffs' constitutionally protected right to travel—either to vacation or to settle—is unimpaired by Rule 56(b)(5), but the privilege they demand in addition is not one which has been dignified with constitutional significance".

Respondents concur with the District Court that Petitioners have not raised a substantial federal question.

The Opinion of the Court of Appeals correctly placed the Petitioners' problem in the proper perspective, as a matter regularly left to the discretion of the State (A-4):

> "The requirement that a lawyer must reside in the state in order to practice law there is widely recognized as an appropriate measure to promote the state concern for the proper administration of justice and is in force in most jurisdictions."

That Court further affirmed the District Court's factual analysis (A-5):

> ". . . those reasons are applicable to the Virgin Islands. Indeed they are even more compelling in that territory because of its geographic isolation

from the Continental United States. For as a practical matter, the Virgin Islands may be reached from the mainland only by travel on limited and, frequently, congested airlines. The case load of the District Court is continually increasing and it would be intolerable if the court were to be compelled to depend, even in part, on lawyers living and practicing law on the mainland more than a thousand miles away to answer urgent calls, attend pretrial conferences, meet trial calendars and appear on short notice as court-appointed counsel for criminal defendants."

The Court of Appeals relied upon *Martin* v. *Walton,* 1961, 368 U.S. 25 and referred to *Application of Titus*, 1972, 213 Va. 289, 191 S.E. 2d 798. In the former case this Court held that a State rule requiring an attorney who habitually practices in another state to associate himself with a local attorney was not offensive to constitutional limitations.

The *Titus* decision (from the Supreme Court of Virginia) found a rule of court not unconstitutional which required a nonresident lawyer who desired to practice in Virginia to become a permanent resident of that state before he could be admitted to practice.

The sequel to the above cited Supreme Court of Virginia, *Titus* opinion was determined by the U. S. District Court (E Va.) in *Titus* v. *Virginia Supreme Court* 1973, 42 LW 2001, 2. In a manner similar to the Virgin Islands judge, the court there enumerated reasons for requiring an attorney, once admitted to practice, to express an intention to reside permanently in Virginia and devote his full time to the practice of law therein. In determining that the rule was not arbitrary, a restraint on the right to travel, nor constituted invidious discrimination the court said:

". . . this court knows of no other means to achieve the goal of a reasonable bar in a particular state. The high ethical standards of an attorney can best be maintained after practice begins if members of the bar have a stake in the community. A resident attorney will have a continuing interest in the success of local society and the quality of community life. In addition, residency reenforces the attorney's interest in his reputation.

The requirements of residence and full-time practice assure familiarity with local legal nuances. Some foreign attorneys may be unable to cope with such legal nuances, and may lack a general knowledge of the law of the state to which they seek admission. Therefore, the state has a very substantial interest in regulating the practice of law within its confines."

We concur that the opinion of the Court of Appeals, based on the premise that Petitioners intended to retain their residence and law practice in Pennsylvania and create an additional residence and practice in the Virgin Islands, constituted a sufficient ground under the rules of the District Court of the Virgin Islands for refusal of their applications and did not deny them the equal protection of the law.

Petitioners, citing the authority of *Dunn* v. *Blumstein*, 1972, 405 U.S. 330 allege that residency laws must be measured by a strict equal protection test and that the burden of justification for such is on the state.

Petitioners failed to point out that *Dunn*, supra, is not applicable here because it deals specifically with a residency requirement of one year *prior to and as a requisite for voting registration*. The instant case does not deal with the residency issue in the same manner. Virgin Islands Rule 56(b)(5) requires a lawyer to

show intent that, *after admission,* he will permanently reside and practice law in this territory. Petitioners have been unwilling to represent that they wish to practice law on a permanent basis in the Virgin Islands. They claim they should be admitted to practice on a part-time basis and that failure to so permit them infringes on their constitutional rights. The courts below, and the Respondents herein, disagree. Such a whimsical desire on Petitioners' part does not constitute a substantial Federal question for determination by this court, but is one of such compelling local interest that it has been habitually reserved to the States for determination.

In *Dunn,* supra, the court during its discussion of prior residency requirements, said (page 343):

> ". . . such laws force a person who wishes to travel and change residences to choose between travel and the basic right to vote . . . Absent a compelling state interest, a state may not burden the right to travel in this way."

Petitioners here do not seek to travel and change residences. They wish only to travel back and forth and practice law where they may pause from time to time. A state has a compelling interest to deter such conduct.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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